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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,592	04/19/2006	Marc Varlet	3315535	7258
7590 Gerald E Helget Suite 2200 80 South Eighth Street Minneapolis, MN 55402			EXAMINER PARSLEY, DAVID J	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 09/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,592

Applicant(s)

VARLET, MARC

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 6-27-08 and this action is final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations of placing a cover plate against the opening of the mold as seen in claims 1-2 and the limitations of a covering plate for the mold intended to be put against the opening render the claims indefinite in that an opening is an open space and is not a tangible object and the term against implies that items are touching or in contact and therefore it is unclear to how a plate is against the opening.

Claim 8 recites the limitation "the surface" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitations "the connecting surface", "the truncated cone" and "the surface" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the top surface" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the top surface" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB Patent No.775,174 in view of French patent FR 2821582.

Referring to claim 1, the British patent discloses a method of producing a mound of earth on the ground comprising, a step of filling a mold - at 1-10,12,13, with earth - see figures 1-4, as step of placing a cover plate - at 11 on the mold - see figures 1-2 and 4, as step of turning over the mold on the ground - see figure 2, a step of removing the cover plate - see figure 2, a step of removing the mold - see figure 2, a recess - at 15, is produced at the top of the mound by the mold by partial removal of the mold so as to leave clear access to the recess - see figure figures 1-4, during the molding of the mound by the mold and the remaining part of the mold becoming a mound cover - see figures 1-4. The British patent does not disclose filling the mold through the opening and turning over the mold and cover plate on the ground. The French patent does

disclose filling the mold through the opening and turning over the mold and cover plate on the ground – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the turning over the mold and cover plate on the ground of the French patent, so as to allow for the contents of the mold to be securely held in place until placement on the ground.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent in view of U.S. Patent No. 5,367,822 to Beckham and further in view of the French patent.

Referring to claim 2, the British patent discloses a method of producing a mound of earth on the ground comprising, a step of filling a mold - at 1-10,12,13, with earth - see figures 1-4, as step of placing a cover plate - at 11 against the opening on the mold - see figures 1-2 and 4, as step of turning over the mold on the ground – see figure 2, a step of removing the cover plate – see figure 2, a step of removing the mold – see figure 2, a recess - at 15, is produced at the top of the mound by the mold by partial removal of the mold so as to leave clear access to the recess - see figure figures 1-4, during the molding of the mound by the mold. The British patent does not disclose the step of placing a protective mound cover covering the mound. Beckham does disclose placing a cover - at 2, over the mound - see figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained. The British patent does not disclose filling the mold through the opening and turning over the mold and cover plate on the ground. The French patent does disclose filling the mold through the opening and turning over the mold and cover plate on the ground – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent

and add the turning over the mold and cover plate on the ground of the French patent, so as to allow for the contents of the mold to be securely held in place until placement on the ground.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as modified by the French patent as applied to claim 1 above, and further in view of JP Patent No. 2-312522.

Referring to claim 3, the British patent does not disclose the recess is a semi-ellipsoid. The Japanese patent does disclose the recess – at a, is a semi-ellipsoid - see figures 11-13. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by Beckham and the French patent and add the semi-ellipsoid recess of the Japanese patent, so as to allow for the mound to be capable of holding a seed.

Referring to claim 6, the British patent further discloses the mold is formed of a truncated cone - see at 1, forming lateral walls of the mold - see figure 1, a surface at the center of the mold – at 6, a connecting surface – at 4,5, forming the bottom of the mold between the truncated cone and the surface extending from the connecting surface towards the inside of the truncated cone in order to produce the recess at the top of the mound - see figures 1-4, and a covering plate - at 3 or 11, for the mold – see figure 1. The British patent does not disclose the surface is a semi-ellipsoid. The Japanese patent does disclose the surface forming the aperture in the mound is semi-ellipsoid – see at 9 in figures 7-10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the semi-ellipsoid recess of the Japanese patent, so as to allow for the mound to be capable of holding a seed. The British patent does not disclose filling the mold through the opening and turning over the mold and cover plate on the ground. The French patent does disclose filling the mold through the opening and turning

over the mold and cover plate on the ground – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the turning over the mold and cover plate on the ground of the French patent, so as to allow for the contents of the mold to be securely held in place until placement on the ground.

Claims 4, 7, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as modified by Beckham and the French patent as applied to claim 2 above, and further in view of JP Patent No. 2-312522.

Referring to claim 4, the British patent as modified by Beckham and the French patent does not disclose the recess is a semi-ellipsoid. The Japanese patent does disclose the recess – at a, is a semi-ellipsoid - see figures 11-13. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by Beckham and the French patent and add the semi-ellipsoid recess of the Japanese patent, so as to allow for the mound to be capable of holding a seed.

Referring to claim 7, the British patent further discloses the mold is formed of a truncated cone - see at 1, forming lateral walls of the mold - see figure 1, a surface at the center of the mold – at 6, a connecting surface – at 4,5, forming the bottom of the mold between the truncated cone and the surface extending from the connecting surface towards the inside of the truncated cone in order to produce the recess at the top of the mound - see figures 1-4, and a covering plate - at 3 or 11, for the mold – see figure 1. The British patent does not disclose the surface is a semi-ellipsoid. The Japanese patent does disclose the surface forming the aperture in the mound is semi-ellipsoid – see at 9 in figures 7-10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the semi-ellipsoid recess of the

Japanese patent, so as to allow for the mound to be capable of holding a seed. The British patent does not disclose filling the mold through the opening and turning over the mold and cover plate on the ground. The French patent does disclose filling the mold through the opening and turning over the mold and cover plate on the ground – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the turning over the mold and cover plate on the ground of the French patent, so as to allow for the contents of the mold to be securely held in place until placement on the ground.

Referring to claim 10, the British patent as modified by the French patent, Beckham and the Japanese patent does not disclose the connecting surface is a truncated cone. However, it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by the Japanese patent and add the connecting surface being a truncated cone, so as to allow for the connecting surface to be attached in the mold.

Referring to claim 13, the British patent as modified by the French patent, Beckham and the Japanese patent does not disclose the top surface is a truncated cone. However, it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by the French patent, Beckham and the Japanese patent and add the top truncated cone, so as to allow any liquid in the device to flow down towards the plant/flower/tree in the device.

Claims 5, 8-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as modified by the French patent as applied to claim 1 above, and further in view of Beckham.

Referring to claim 5, the British patent as modified by the French patent further discloses producing a mound - see figures 1-4 of the British patent, placing a plantlet and its clod in the

recess - see figures 1-4 of the British patent, and the clod and the recess have complementary shapes - see figures 1-4 of the British patent. The British patent as modified by the French patent does not disclose placing the plant and clod in the hole in the mound cover. Beckham does disclose placing the plant and clod in the hole in the mound cover – see figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by the French patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Referring to claim 8, the British patent as modified by the French patent and Beckham further discloses the surface - at 6 is removable - see figure 1 of the British patent.

Referring to claim 9, the British patent as modified by the French patent and Beckham further discloses the connecting surface descends from the truncated cone towards the surface – see figures 1-2 and 4 of the British patent.

Referring to claim 12, the British patent as modified by the French patent and Beckham further discloses the top surface descends from the truncated cone – see at 14,15 in figures 1 and 4 of Beckham, towards the opening - see figures 1 and 4 of Beckham. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by the French patent and Beckham and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as applied to claim 1 above, and further in view of Beckham.

Referring to claim 11, the British patent does not disclose the mound cover comprises a truncated cone, forming the lateral walls of the mound cover, a top surface forming the top of the

mound cover in that the top surface is provided with an opening for access to the recess.

Beckham does disclose the mound cover comprises a truncated cone – see at 16,20, forming the lateral walls of the mound cover – see figures 1 and 4, a top surface forming the top of the mound cover in that the top surface is provided with an opening for access to the recess – see at 14,15 in figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Response to Arguments

4. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643